



Attorney General
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Phoenix, Arizona 85007
Robert R. Corbin

November 14, 1988

The Honorable Doug Todd
State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I88-115 (R88-108)

Dear Senator Todd:

You have asked whether it is unlawful pursuant to A.R.S. § 13-3305 to conduct a contest that meets all of the following criteria:

1. A commercial entity would award cash prizes and merchandise to weekly contest participants who successfully predict the winners of various sporting events.
2. Entries would be submitted without entry fee.
3. Entries could be submitted by anyone, whether customers of the commercial entity or not.
4. The amount of the prize would not vary based on the number of entries and all prizes would be paid out of the general funds of the contest sponsor.

A.R.S. § 13-3305 prohibits betting and wagering and provides as follows:

- A. Subject to the exceptions contained in 5-112, no person may engage for a fee, property, salary or reward in the business of accepting, recording or registering any bet, purported bet, wager or purported wager or engage for a fee, property, salary or reward in the business of selling wagering pools or

purported wagering pools with respect to the result or purported result of any race, sporting event, contest or other game of skill or chance or any other unknown or contingent future event or occurrence whatsoever.

- B. A person shall not directly or indirectly knowingly accept for a fee, property, salary or reward anything of value from another to be transmitted or delivered for wagering or betting on the results of a race, sporting event, contest or other game of skill or chance or any other unknown or contingent future event or occurrence whatsoever conducted within or without this state or anything of value as reimbursement for the prior making of such a wager or bet on behalf of another person.
- C. A person who violates this section is guilty of a class 6 felony.

(Emphasis added.)

Due process requires proof of every element of a criminal offense beyond a reasonable doubt. State v. Jensen, 153 Ariz. 171, 176, 735 P.2d 751, 786 (1987), citing In re Winship, 397 U.S. 358, 365, 90 Sct. 1068, 1073, 25 L.Ed.2d 368, 375-376 (1970).

One of the elements of the crime set out in subsection (A) of A.R.S. § 13-3305 is the registration of a bet or purported bet. Subsection (B) of the statute requires transmittal of something of value for wagering or betting. Because these elements are eliminated by the criteria you have listed which permits participation without the payment of a fee, A.R.S. § 13-3305 would not preclude a commercial entity from conducting the described contest. See also Ariz. Atty. Gen. Op. 187-101 (gambling does not occur unless there is the risk or giving of something of value).

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General